IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 937 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORBHAI BHIMABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 937 of 1996
MS BANNA S DUTTA for appellant
MR.R.M.CHAUHAN, A.P.P., for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated October 9, 1996 rendered by the learned Additional Sessions Judge, Bharuch, in Sessions Case No.143 of 1996, by which the appellant is convicted of the offences punishable under Sections 302 and 506(2) of the Indian Penal Code and sentenced to suffer R.I. for life and fine of Rs.500/-, in default, R.I. for one month, for commission of offence punishable under Section 302 of I.P.C. as well as R.I. for one month and fine of Rs.100/-, in default, R.I. for one week, for commission of offence punishable under Section 506(2) of I.P.C.

2. One Govindbhai Motibhai Vasava was resident of village Ninam, Taluka : Amod, District : Bharuch. He was serving as servant at the house of Vallabhbhai Gulabbhai Patel. He was married to deceased Maliben, who was daughter of Maganbhai Khodabhai Vasava. During the subsistence of marriage, deceased had given birth to a boy named Shankerbhai and to a girl named Ansuya. In the morning of February 13, 1996 at about 8.00 A.M. Govindbhai had left his house for performing his duties at the house of Vallabhbhai Patel. His wife Maliben and son Shankerbhai had gone to the field of one Karshanbhai Hirabhai Patel for picking cotton. At about 12.00 noon, he had come to his house for taking meals. At that time, his daughter was present, but his wife was not present and, therefore, food was cooked by his daughter. After some time, his son Shankerbhai had also come to the house and on inquiry being made as to where his mother was, his son had informed him that mother would come to house after he would go to the field. After taking meals, his son and daughter had gone for doing labour work; whereas he had stayed at the house upto 2.00 P.M. and had again gone to attend duties at the house of Vallabhbhai Patel. At about 7.00 P.M. he had again returned to his house and found that his son and daughter were present, but his wife was not present and, therefore, he had made inquiry with his son Shankerbhai as to where his mother had gone. Thereupon Shankerbhai had informed Govindbhai that his mother had gone to another village and had not informed him as to where she was going. Meanwhile, sarpanch of village named Vallabhbhai Mohanbhai Patel had come to the house of Govindbhai and informed him that his wife was lying dead in the house of Haribhai Kilabhai Vasava which was situated in the Falia wherein house of Govindbhai was also situated. Govindbhai, in the company of sarpanch, had gone to the house of Haribhai Vasava and found that

his wife was lying dead. It was also noticed by him that no marks of injury were visible on the dead body of his wife. According to Govindbhai, his wife was taking tonic for weakness and that she had died because of some reason. After learning that his wife had died, Govindbhai had given information about the death of his wife at Amod Police Station which was registered as Accidental Death No.2/96 under Section 174 of the Code of Criminal Procedure, 1973. The inquiry about accidental death of the deceased was handed over to Head Constable Ranchhodbhai Mathurbhai, who was serving at Sarbhan Outpost. The Head Constable had held inquest on the dead body of the deceased and also prepared panchnama of place of occurrence. Thereafter he had recorded statements of witnesses who were residing near the place of incident. The Head Constable had recorded statement of Govindbhai Vasava under Section 161 of the Code on February 18, 1996. At that time, Govindbhai had stated that he had taken his son Shankerbhai into confidence and that his son Shankerbhai had informed him that while he, in the company of his mother, was returning home on the date of incident, the accused had dragged his mother in the house of Haribhai Kilabhai and closed the doors of the house. It was also stated by Govindbhai that his son had disclosed before him that he had seen through crevices of the door that the appellant was strangulating his mother with the help of string and that when he had gone at the place where his mother was lying, he was threatened with dire consequences by the appellant and, therefore, he had not informed any one about the incident. On such statement being made by Govindbhai, Head Constable Ranchhodbhai Mathurbhai had lodged complaint with Police Sub Inspector of Amod Police Station. The complaint filed by Head Constable Ranchhodbhai Mathurbhai was investigated by Police Sub-Inspector Mr.P.R.Ravalji of Amod Police Station. He had obtained postmortem report and recorded statements of the witnesses found to be conversant with the facts of the case. During the course of investigation, Mr.Ravalji had arrested the appellant and recovered the string used in commission of crime. At the conclusion of investigation, the appellant was chargesheeted in the Court of learned Judicial Magistrate, First Class, Amod for the offences punishable under Sections 302 & 506 of the Indian Penal Code. As the offence punishable under Section 302 I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Bharuch for trial where it was numbered as Sessions Case No.143 of 1996.

3. The learned Judge had framed charge against the appellant at Exh.1 for the offences punishable under

Sections 302 and 506 of the Indian Penal Code. The charge was read over and explained to the appellant, who had pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution had examined, (1) Shankerbhai Govindbhai, PW.1 at Exh.10, (2) Govindbhai Motibhai,PW.2 at Exh.11, (3) Muljibhai Dahyabhai, PW.3 at Exh.13, (4) Ranchhodbhai Mathurbhai, PW.4 at Exh.17, (5) Sumanben Jashubhai, PW.5 at Exh.20, (6) Pravinsinh Ranjitsinh Ravalji, PW.6 at Exh.21, and (7) Dr.Vijaykumar Mahadevprasad Chaudhary, PW.7 at Exh.23, to prove the case against the appellant. The prosecution had also produced documentary evidence, such as, information regarding accidental death of the deceased given by Govindbhai at Exh.12, inquest panchnama at Exh.14, panchnama of place of occurrence at Exh.15, recovery panchnama of string at Exh.16, complaint lodged by Head Constable Ranchhodbhai Mathurbhai at Exh.18, postmortem notes of the deceased at Exh.24 etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the case of the appellant was that of total denial, but the appellant had not examined any witness in his defence. However, the appellant had submitted his written statement at Exh.26 mentioning, inter alia, that he had illicit relations with the deceased, as a result of which Govindbhai, who was husband of the deceased, was enraged and had falsely implicated him in the case. What was claimed in the written statement was that he was suffering from paralysis of left leg and hand and as he was not in a position to commit murder of the deceased, he should be acquitted.

5. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that the deceased had died a homicidal death. The learned Judge deduced that the substantive evidence of witness Shankerbhai Govindbhai, who was son of the deceased and eye witness, was reliable and corroborated by the evidence of his father i.e. Govindbhai as well as that of Sumanben Jashubhai, and that the evidence of the prosecution witnesses proved beyond reasonable doubt that the appellant had committed murder of deceased Maliben. In view of the above referred to conclusions, the learned Judge has convicted the appellant of the offences

punishable under Sections 302 and 506(2) of the Indian Penal Code and imposed sentences noticed earlier by judgment dated October 9, 1996, giving rise to instant appeal.

6. Ms.Banna Dutta, learned counsel of the appellant, contended that evidence of so-called eye witness Shankerbhai Govindbhai is not reliable and, therefore, on the basis of his evidence, the appellant should not have been convicted of the offences with which he was charged. Elaborating the said argument, it was pleaded that the claim of witness Shankerbhai that he had seen body of his mother hanging from the beam, is not borne out from the record, nor does it satisfactorily establish that he was able to see through the crevices of the door that the appellant was strangulating the deceased, and therefore, the conviction of the appellant should be set aside. According to the learned counsel of the appellant, the claim of witness Shankerbhai that he was threatened with dire consequences by the appellant, does not sound to be probable because he would not have failed to narrate the incident to his father when he was questioned by his father in detail on the date of incident. What was claimed was that the evidence of witness Shankerbhai completely excludes the presence of witness Sumanben, who according to the prosecution, was with Shankerbhai and had allegedly seen the incident, as a result of which the appellant is entitled to the benefit of reasonable doubt. It was argued that witness Shankerbhai had admitted in his substantive evidence before the Court that left leg and left hand of the appellant were paralytic, which in turn would improbabalise the case of the prosecution that the appellant had strangulated the deceased by means of a string and, therefore, judgment impugned should be set aside. According to the learned counsel of the appellant, the evidence has not been appreciated in right prospective by the learned Judge and, therefore, the appeal should be allowed.

7. Mr.R.M.Chauhan, learned Additional Public Prosecutor, contended that the evidence of witness Shankerbhai, which is corroborated by the evidence of his father Govindbhai as well as the evidence of witness Sumanben establishes that the appellant had dragged the deceased in the house of Haribhai Kilabhai where he had strangulated the deceased to death and, therefore, well reasoned conviction of the appellant should be upheld by this Court. According to the learned counsel of the State Government, embellishments appearing in the evidence of witness Shankerbhai are not vital and, therefore, should not be made basis for allowing the

appeal. What was emphasised was that a boy of tender age was threatened by the appellant with dire consequences, as a result of which he had not narrated the incident to his father on the date of incident, but the case of prosecution being consistent and reliable, the appeal should be dismissed.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to broad and reasonable probabilities of the case. The fact that the deceased had died a homicidal death is not in dispute. The injuries sustained by the deceased have been noticed in the inquest panchnama. Further, the evidence of Dr.Vijaykumar Mahadevprasad Chaudhary, PW.7 Exh.23, would show that the deceased had sustained antemortem injuries and that her death had taken place because of asphyxia due to strangulation. It is nobody's case that the deceased had committed suicide. The finding recorded by the learned Judge of the trial Court that it is proved by the prosecution that the deceased had died a homicidal death is eminently just and is hereby upheld.

9. In order to understand the case of the prosecution, it would be relevant to notice the substantive evidence of witness Shankerbhai Govindbhai, which is recorded at Exh.10. The witness has stated before the Court that the appellant had strangulated his mother in the house of Haribhai Kilabhai after closing the doors. According to this witness, the appellant had dragged his mother in the house of Haribhai Kilabhai, after which doors of the house were closed and that no one had accompanied him. What is claimed by the witness is that through crevices of doors he was able to see that dead body of his mother was hanging from the beam and that he was threatened with dire consequences by the appellant, as a result of which, he had not mentioned the incident to anyone and had gone to the house of his maternal uncle. In his cross-examination, the witness has stated that he had returned to his house from the house of his maternal uncle after four days and that thereafter he had narrated the incident to his father. The witness has admitted in his cross-examination that he had not narrated before the police that he had seen the dead body of his mother hanging from the beam. According to this witness, the deceased had illicit relations with the appellant, which was not approved by his father and that his mother was meeting the appellant every day before the date of incident. The suggestion made by the defence that he had informed his father that his mother had gone in the house of Haribhai Kilabhai with the

appellant and therefore, his father had killed his mother was denied by the witness. Witness Govindbhai Motibhai has stated in his examination-in-chief that his son had narrated the incident for the first time on February 18, 1996 and stated that the appellant had killed the deceased in the house of Haribhai Kilabhai by strangulating and that he had seen the same through crevices of the doors. In his cross-examination it was admitted by the witness that there were about five houses between his house and house of Haribhai Kilabhai and that it was possible to hear shout if the same was raised near the house of Haribhai Kilabhai. The witness denied the suggestion made by the defence that his wife had illicit relations with the appellant and, therefore, he was dissatisfied with the deceased. During the cross-examination, this witness had disowned the information about the accidental death of the deceased which was given by him on February 18, 1996. Witness Sumanben Jashubhai, PW.20, had stated in her substantive evidence that she had gone in the company of Maliben to pick cotton, but had shown ignorance as to where the deceased had gone after both of them had gone to take their respective meals. This witness had not supported prosecution and therefore, the witness was cross-examined by the learned A.P.P. and in her cross-examination it was stated by her that she had seen the appellant sitting near the dead body of the deceased. On reappreciation of evidence adduced by the prosecution it becomes clear that it is nobody's case that the dead body of the deceased was found hanging from the beam as is claimed by witness Shankerbhai. The evidence of so-called eye witness Shankerbhai does not show that who had opened the door of the house of Haribhai Kilabhai after it was bolted from inside by the appellant. The claim of witness Shankerbhai that he had seen the appellant strangulating the deceased through crevices of the doors does not sound to be probable in view of the contents of panchnama of place of occurrence. The panchnama of place of occurrence would indicate that there were two rooms in the house of Haribhai Kilabhai and that the incident had taken place in the inner room and it is highly improbable that witness Shankerbhai would have been able to see through the crevices of the door that the deceased was strangulated by the appellant with a string. As noticed earlier, witness Shankerbhai has excluded the presence of witness Sumanben. It is relevant to notice that the case of witness Shankerbhai is that he was frightened because of the threat administered by the appellant and had, therefore, gone to the house of his maternal uncle from where he had returned to his house after four days, but this relevant fact is not deposed by his father

Govindbhai at all. What is stated by Govindbhai in his testimony before Court is that his son had informed him on February 18, 1996 that the appellant had strangulated his wife to death. However, Govindbhai has not stated in his evidence that witness Shankerbhai had gone to the house of his maternal uncle from where he had returned to his house after four days and that thereafter he had narrated the incident to him. The accidental report registered on the basis of information conveyed by Govindbhai would indicate that witness Shankerbhai was available at village Ninam for all the days and had never gone to the house of his maternal uncle. The contents of the report relating to accidental death of the deceased proved through the evidence of Head Constable Ranchhodbhai establishes that witness Shankerbhai was available at his house and informed his father that the deceased had gone to another village. Thus, case of threat administered to Shankerbhai by the appellant becomes highly doubtful and one gets the impression that story about Shankerbhai having gone to the house of his maternal uncle because he was frightened is told before the Court in order to explain delay in conveying necessary information to Head Constable Ranchhodbhai. Further, if Shankerbhai, in the company of Sumanben, had seen the appellant strangulating his mother, he would not have failed to intervene and/or raise shouts to save his mother, but admittedly no shouts were ever raised either by witness Shankerbhai or by witness Sumanben, nor any attempt was made to rescue the deceased. Moreover, it is also an admitted fact that left hand and left leg of the appellant are paralytic and, therefore, it is doubtful whether he would have been able to strangulate the deceased because if any such attempt had been made, the deceased would have certainly offered resistance resulting into some injuries on the person of the appellant. It is highly doubtful whether a paralytic person would be able to strangulate an able bodied woman. The prosecution has not established as to how sarpanch of the village had learnt that dead body of the deceased was lying in the house of Haribhai Kilabhai. The inconsistencies which are found in the evidence of the so-called eye witness go to the root of the matter and pertain to significant aspects thereof. The claim of the prosecution that witness Shankerbhai had narrated the incident to his father on the 5th day of the incident appears to be highly improbable. Having regard to the nature of incongruities obtaining in the evidence of the so-called eye witness, this Court is of the opinion that the appellant is entitled to the benefit of reasonable doubt. After analysing, sifting and assessing the evidence on record with particular reference to its

trustworthiness and truthfulness by a process of dispassionate scrutiny, this Court finds that it is difficult to uphold the conviction of the appellant and, therefore, the appeal deserves to be accepted.

For the foregoing reasons, the appeal succeeds. The judgment dated October 9, 1996, rendered by the learned Additional Sessions Judge, Bharuch, in Sessions Case No.143 of 1996 convicting the appellant of the offences punishable under Sections 302 and 506(2) of the Indian penal Code and sentencing him to R.I. for life and fine of Rs.500/-, in default, R.I. for one month, for commission of offence under Section 302 I.P.C., and R.I. for one month and fine of Rs.100/-, in default, R.I. for one week, for commission of offence under Section 506(2) of I.P.C. is hereby set aside. The appellant shall be set at liberty forthwith, unless he is required in connection with any other case. The appeal is accordingly allowed. The muddamal to be disposed of in terms of directions contained in the impugned judgment.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)